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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,153	09/23/2003	Mark C. Nicely	14522-004001	2854
22434 7590 02/14/2008 BEYER WEAVER LLP P.O. BOX 70250 OAKLAND, CA 94612-0250				
EXAMINER DUFFY, DAVID W				
ART UNIT		PAPER NUMBER		
3714				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/670,153

**Applicant(s)**

NICELY ET AL.

**Examiner**

DAVID W. DUFFY

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 19, 20 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19, 20 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date 11/30/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. This office action is in response to the amendment filed 11/30/2007 in which applicant amends claims 1, 9, 11, 14, 15, 19, 20, and 24-27 and cancels claims 21-23 and 28-29. Claims 1-17, 19-20, and 24-27 are pending.

### ***Specification***

2. The disclosure is objected to because of the following informalities: pg 16, line 6 and 22; pg 17, line 3 "loosing" should be losing.

Appropriate correction is required.

3. It is noted that applicant's description of the equation for the determination of the basis of equitable contributions by progressive game participants appears to be incorrect. On page 22, applicant has given the equation  $(\$2) * (2\%) * (1/50 \text{ million}) = (\$2) * (y \%) * (1/40 \text{ million})$ . Examiner understands this equation to be incorrect as it is explained in the specification that the wager size is proportional to the odds (pg 20, line 28) which would result in the formula  $(\$2) * (2\%) = X * (1/50 \text{ million})$ , where X is a constant. Thus follows that applicant's equation for X given on pg 22, line 23 also appears incorrect and should be  $X = (\$2) * (2\%) / (1/50 \text{ million})$ . It is further noted that this equation is included in the limitations of all the presented claims.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-17, 19-20, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torango (US 6241608).
6. In regards to claims 1 and 14, Torango discloses a system for managing a progressive jackpot comprising an interface (9:17-19) and a progressive engine that monitors game wager data to set the product of the contribution percent, odds of winning, and wager amount equal for all gaming devices by changing the contribution percent (6:12-17, Contribution percent; 7:43-45, Surcharge Percent; 7:56-66, Total Wager Amount; 13:60-14:21, where total wager amount =  $\text{wager} * \text{odds}$  and the surcharge percent is the change in percent contributed to the bonus pool). Torango lacks explicitly disclosing when the computations determining the change in percentage of a wager to apply to a progressive are made. However, the frequency of an update to a system would be a matter of obvious design choice, well within the abilities of one skilled in the art to set at whatever rate they desired, e.g. nightly weekly, every wager, every other wager, etc.
7. In regards to claim 2, Torango discloses that the system is operable to incorporate many gaming systems with various parameters into one jackpot (figure 1 and 11:38-53).
8. In regards to claim 3, Torango discloses a network for the system to operate within (8:40-44).
9. In regards to claims 4 and 5, Torango discloses currency conversion done in real time (17:32-43).

10. In regards to claims 6 and 7, Torango discloses displaying jackpot information to players in real time (16:41-43).
11. In regards to claim 8, Torango discloses resetting the value of the jackpot after a win (21:30-31).
12. In regards to claim 9, 10, and 20, Torango discloses a first game with parameters, a second game system with parameters different from the first participating in a progressive jackpot, whereby in response to wager amounts (total wager amount), the system analyses the parameters and changes the percentage of a wager to apply to the jackpot to make the contributions equal (surcharge percent) (12:66-14:20). Torango lacks explicitly disclosing when the computations determining the change in percentage of a wager to apply to a progressive are made. However, the frequency of an update to a system would be a matter of obvious design choice, well within the abilities of one skilled in the art to set at whatever rate they desired, e.g. nightly weekly, every wager, every other wager, etc.
13. In regards to claim 11, Torango discloses multiple gaming machines, which would also include a third game (figure 1).
14. In regards to claim 12, Torango discloses that odds are included in the game parameters (7:56-66).
15. In regards to claim 13, Torango discloses the parameters include currency type (17:23-31).
16. In regards to claim 15, Torango discloses one or more gaming systems seeking participation in a jackpot, analyzing the game systems' characteristics, converting

currency, changing the jackpot contributions to make total contributions equal (12:66-14:20) and further identifies a source of wager amounts, determines the value to add to the jackpot and adds that value to the jackpot (17:14-43). Torango lacks explicitly disclosing when the computations determining the change in percentage of a wager to apply to a progressive are made. However, the frequency of an update to a system would be a matter of obvious design choice, well within the abilities of one skilled in the art to set at whatever rate they desired, e.g. nightly weekly, every wager, every other wager, etc.

17. In regards to claim 16, Torango discloses validating the payout parameters of gaming systems by verifying game odds and payoff are consistent and within predetermined criteria and including validated games in the jackpot (12:66-14:20, note linking is not done if game system is not within acceptable ranges).

18. In regards to claim 17, Torango discloses a first server; a second server and a progressive jackpot manager networked where the game servers have one or more game systems connected (Figure 1).

19. In regards to claim 19, Torango discloses receiving data concerning a wager amount of a user of a gaming system (total wager amount), changing the percentage of a wager to be added to the progressive jackpot (surcharge percentage) such that contribution is equal for all gaming systems (12:66-14:20), incrementing the jackpot by the resultant amount (17:32-43), executing a random number generator using odds from the game system and transmitting the results to the gaming system (15:60-26).

Torango lacks explicitly disclosing when the computations determining the change in

percentage of a wager to apply to a progressive are made. However, the frequency of an update to a system would be a matter of obvious design choice, well within the abilities of one skilled in the art to set at whatever rate they desired, e.g. nightly weekly, every wager, every other wager, etc.

20. In regards to claim 20, Torango discloses calculating the surcharge percentage through retrieval of previous analysis (13:11-67).

21. In regards to claims 24-27, Torango discloses identifying a source of wager amounts, determining the value to add to the jackpot and adding that value to the jackpot (17:14-43).

#### ***Response to Arguments***

22. Applicant's arguments, see pgs 8 and 9, filed 11/30/2007, with respect to 112 second paragraph have been fully considered and are persuasive. The rejection of claims 1-17, 19-20, and 24-27 has been withdrawn.

23. Applicant's arguments filed 11/30/2007 have been fully considered but they are not persuasive with respect to Torango. Applicant states that Torango does not appear to use the odds in the calculation of withholding percent. Examiner respectfully disagrees. As stated, the determination equation for surcharge percent includes total wager amount which where  $\text{total wager amount} = \text{wager} * \text{odds}$ .

24. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., receiving progressive payout parameters associated with an incoming wager) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

**Conclusion**

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. DUFFY whose telephone number is (571)272-1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David W Duffy/  
Examiner, Art Unit 3714

//Corbett B. Coburn//  
Primary Examiner, Art Unit 3714